Filed May 21, 1904.

Supreme Court of the United States.

October Term, A. D. 1904.

THE [illegible] ELEVATOR RAILROAD COMPANY,
Plaintiff in Error,

vs.

THE FARMERS LOAN AND TRUST COMPANY, ET AL.,
Defendants in Error.

Reply to Suggestions of Plaintiff in Error Against Motions to Docket Supplemental, &c.

HERBERT A. TURNER,
WILLIAM BURRY,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

THE LAKE STREET ELEVATED RAILROAD COMPANY, *Plaintiff in Error,* vs. THE FARMERS' LOAN AND TRUST COMPANY et al., *Defendants in Error.*	Writ of Error to Supreme Court of Illinois.

Reply to Suggestions of Plaintiff in Error Against Motions to Vacate Supersedeas, &c.

In the suggestions filed against our motions the principal error arises from the misconception, plainly always in counsel's mind, that this entire case is to be reargued and reconsidered by the court on the present writ of error. This idea crops out all the time. He does not recognize that the opinion of this court is decisive of the law, or that the statement of the case which precedes the opinion states the facts found.

The other error into which he falls is the idea that the supplemental record from the Superior Court, which the

Illinois Supreme Court *did not give him leave to file*, and which seems to relate to matters occurring long after the record was made up in this case, became part of the record in the Illinois Supreme Court, or can be considered as part of the record in this court. The mere fact that the clerk of the Illinois Supreme Court filed it, or insisted upon inserting it as part of the certified record, does not make it part of the record or bring it before this court.

Eliminate from the suggestions filed by counsel for plaintiff in error the parts depending upon the above two misconceptions, and there is very little left of them.

He further insists that in its opinion this court affirmed part of the decree of the Superior Court. Nothing could be further from the letter and spirit of that opinion.

Upon this second writ of error, plaintiff in error cannot have a rehearing of what was passed upon in the former opinion. His suggestion, therefore, on page 2, that the original bill and all the proceedings and the original decree must be printed is wrong. Even if it were right, however, they are all printed in the printed record of the original case, which was No. 108 of the October, 1899, term, and can be referred to there.

If less than three weeks' notice of the motions was given, still the rule does not require that much notice on a motion to vacate the supersedeas, a brief could not be prepared and three weeks' notice given in time to submit a motion at this term, and counsel for plaintiff in error has accepted the two weeks from the time notice was served in which to prepare and file his suggestions.

On pages 14, 15, 30 and elsewhere in his suggestions counsel for plaintiff in error makes many statements con-

cerning the progress of the foreclosure case which are wholly outside of the proper record. It nowhere appears that all the bondholders have been settled with, or that plaintiff in error has bought up their bonds or redeemed them at par, or that it has deposited the bonds under the scaling arrangement. No such facts, even if they existed, were in the record before the Illinois Supreme Court, and therefore cannot be considered here. Indeed, the extracts from remarks of Judge Grosscup, appearing on pages 27 and 28 of suggestions for plaintiff in error, show that as late as May 28, 1900, the Federal Circuit Court held that the foreclosure case was in a condition and position to be further prosecuted.

By the heading VI and the first paragraph thereunder counsel for plaintiff in error in effect states that he wishes to reargue on this writ of error the merits of the case, and he then proceeds to restate his version of the original case. If this was his purpose in obtaining this writ of error, it is plainly taken for delay only and on frivolous grounds.

The position taken on page 22 of the suggestions, that this court passed upon and by implication affirmed the state court's holding that the case was not properly removed to the Federal court, is too far-fetched to call for argument against it.

The authorities on pages 34 and 35 of the suggestions, are upon motions made before this court had decided the cases upon their merits.

This court ordered that the judgment of the Illinois Supreme Court, affirming the decree of the Superior Court, be reversed. The Illinois Supreme Court then reversed the decree of the Superior Court. It therein

obeyed exactly the order of this court. The Illinois Supreme Court then, for reasons satisfactory to itself and undoubtedly in accordance with the law of the state and with comity between courts, as the same is recognized in Illinois, ordered that the bill be dismissed. That order was not inconsistent, was the opinion of this court and must therefore stand.

HERBERT B. TURNER,
WILLIAM BURRY,
Solicitors for the Farmers' Loan and Trust Company.

3657